

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE  
AT CHATTANOOGA**

TOMMY LEE DAVIDSON, Individually, )  
and as Trustee of the Tommy L. )  
Davidson Retirement Plan and )  
DAVIDSON HEALTH SERVICES, )  
LLC, )

Plaintiff, )

v. )

Civil Action No. \_\_\_\_\_

MARY ANGELA SHUSTER AND )  
AMERICAN NATIONAL INSURANCE )  
COMPANY, )

Defendants. )

**NOTICE OF REMOVAL**

Defendant American National Insurance Company (“ANICO”), by and through counsel, removes this action to the United States District Court for the Eastern District of Tennessee at Chattanooga, stating as follows:

1. On May 6, 2016, Plaintiffs Tommy Lee Davidson, individually and as trustee of the Tommy L. Davidson Retirement Plan, and Davidson Health Services, LLC filed a Complaint in the Circuit Court of Hamilton County, Tennessee, in Case No. 16C591 against Defendant Mary Angela Shuster seeking, among other things, a declaration of the parties’ rights concerning a distribution balance of \$81,198.75, pursuant to the terms of a marital dissolution agreement and qualified domestic relations order.

2. On April 4, 2019, Plaintiffs’ filed their Second Amended Complaint to Interpret Final Judgment, for Declaratory Judgment and to Recover Funds Paid in Error (“Second Amended Complaint”), which added ANICO to the litigation as a party defendant. ANICO was

served with process on April 17, 2019. Copies of the Summons and Second Amended Complaint are appended hereto as **Exhibit A**, and constitute all process, pleadings and orders served upon ANICO to date in this action.<sup>1</sup>

3. This action is of a civil nature seeking, among other things, recovery of certain benefits under a Section 412(e) Plan (formerly called a 412(i) plan) under the Internal Revenue Code, alleged to have been administered by ANICO and sponsored by Davidson Health Services, LLC. (*See* Second Amended Complaint, Ex. A, ¶¶ 7–9.) Plaintiffs allege that ANICO breached the contractual provisions under the subject pension plan and annuity contracts and failed to pay such benefits as are due to the Plaintiffs pursuant to such plan provisions. (*Id.* ¶ 36.)

4. The Court has original subject matter jurisdiction over the action pursuant to 28 U.S.C. § 1331 inasmuch as the Second Amended Complaint asserts a claim for benefits under a pension plan covered by the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001, *et seq.* (“ERISA”).

5. ERISA completely preempts state law causes of action and provides the exclusive federal remedies for resolution of claims for benefits by employee plan participants and beneficiaries. *See* ERISA § 502 (a)(1)(B), 29 U.S.C. § 1132(a)(1)(B).

6. Section 502(e) of ERISA, 29 U.S.C. § 1132(e), confers original jurisdiction upon district courts in the United States over claims initiated by participants or beneficiaries to recover benefits due and enforce rights under pension plans subject to ERISA.

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<sup>1</sup> A notice of removal must be filed “with a copy of all process, pleadings, and orders served upon [the removing defendant] in such action.” 28 U.S.C. § 1446(a). Where a case is removed from state court, the district court “may require the removing party to file with its clerk copies of all records and proceedings in such State court or may cause the same to be brought before it by writ of certiorari issued to such State court.” 28 U.S.C. § 1447(b).

7. Thus, Plaintiffs' Second Amended Complaint is an action of a civil nature founded upon a claim arising under the laws of the United States over which a district court in the United States is given original jurisdiction pursuant to 28 U.S.C. § 1131 and is therefore removable to this Court pursuant to the provisions of 28 U.S.C. §§ 1141(a) and (b).

8. This Court also has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1332 and 1441(b), inasmuch as there is complete diversity of the parties and the amount in controversy exceeds \$75,000.

9. Pursuant to 28 U.S.C. § 1332, federal district courts have original jurisdiction of "all civil actions where the matter in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs, and is between . . . citizens of different states . . . ."

10. This Court has original jurisdiction pursuant to 28 U.S.C. § 1332(a)(1). As shown by the Second Amended Complaint naming ANICO as a party defendant, Plaintiff Tommy Lee Davidson is a resident of Hamilton County, Tennessee. (Second Amended Complaint, Ex. A, ¶ 1.) Additionally, Plaintiff Davidson Health Services, LLC, is a Tennessee limited liability company with its principal office in Hamilton County, Tennessee. (*Id.* ¶ 2.)

11. Defendant Mary Angela Shuster is a resident of Georgia. (*Id.* ¶ 3.)

12. ANICO is a Texas company with its headquarters based in Galveston, Texas. Accordingly, there is complete diversity of citizenship of the parties.

13. Plaintiffs' claim seeks recovery from ANICO for breach of its obligations under "the Plan and annuity contracts," alleged to be \$81,198.75. Based on these allegations, the amount in controversy exceeds \$75,000, exclusive of interest and costs.

14. ANICO has filed no pleadings in this action, and this Notice of Removal is filed within thirty days after receipt of service of the Second Amended Complaint and Summons in this action.

15. The undersigned counsel has conferred in writing with counsel for co-Defendant Mary Angela Shuster, who advised in writing that Defendant Shuster consents to this Removal.

16. ANICO is hereby giving notice of the filing of this Notice of Removal to all parties as required by 28 U.S.C. § 1446(b) and will file a copy with the clerk of the Circuit Court of Hamilton County, Tennessee, as further required by that Section.

WHEREFORE, ANICO respectfully requests that this Court accept this Notice of Removal and that it assume jurisdiction of this cause and issue all orders and processes as may be necessary for the adjudication thereof.

Respectfully submitted May 17, 2019.

**MILLER & MARTIN PLLC**

**s/James T. Williams**

James T. Williams, BPR # 16341

[james.williams@millermartin.com](mailto:james.williams@millermartin.com)

Jenna W. Fullerton, BPR # 036522

[jenna.fullerton@millermartin.com](mailto:jenna.fullerton@millermartin.com)

832 Georgia Avenue, Suite 1200

Chattanooga, TN 37402-2289

Telephone: (423) 756-6600

Facsimile: (423) 785-8480

***Attorneys for Defendant American National  
Insurance Company***

### **CERTIFICATE OF SERVICE**

I hereby certify that on **May 17, 2019**, a copy of the foregoing pleading was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. mail. Parties may access this filing through the Court's electronic filing system.

#### **MILLER & MARTIN PLLC**

**s/James T. Williams**

James T. Williams, BPR # 16341

[james.williams@millermartin.com](mailto:james.williams@millermartin.com)

Jenna W. Fullerton, BPR # 036522

[jenna.fullerton@millermartin.com](mailto:jenna.fullerton@millermartin.com)

832 Georgia Avenue, Suite 1200

Chattanooga, TN 37402-2289

Telephone: (423) 756-6600

Facsimile: (423) 785-8480

*Attorneys for Defendant American National  
Insurance Company*